

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

JOSE LUIS KELLY,

Petitioner

v.

UNITED STATES OF AMERICA,

Respondent

Civ. No. 20-1702 (ADC)
[Related Case No. 18-621-1 (ADC)]

OPINION AND ORDER

Before the Court is U.S. Magistrate Judge Marshal D. Morgan (“Magistrate Judge”) Report and Recommendation (“R&R”) in connection with petitioner José Luis Kelly’s 28 U.S.C. § 2255 petition. The Magistrate Judge indicated that pursuant to Fed. R. Civ. P. 72(b)(2) and L. Civ. R. 72, petitioner had fourteen days to file any objections to the R&R, which were due on or before October 14, 2023. **ECF No. 17.**

The record reflects that, as of this date, petitioner has not filed any objections to the R&R. As such, the Report and Recommendation is deemed as unopposed and submitted to the Court for final determination. *See* Fed. R. Civ. P. 72.

After carefully reviewing the Magistrate Judge’s R&R, the filings and the record, the Court hereby adopts the R&R, and as such hereby **DENIES** petitioner’s § 2255 petition at **ECF No. 1.**

Pursuant to Rule 11(a) of the Rules Governing § 2255 Proceedings, a “district court must issue or deny a certificate of appealability (“COA”) when it enters a final order adverse to the applicant.” Rules Governing § 2255 Proceedings, Rule 11, 28 U.S.C. § 2255. To merit a COA, an applicant must make “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). “When the district court denies a habeas petition on procedural grounds without reaching the prisoner’s underlying constitutional claim, a [certificate of appealability] should issue when the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

Applying the standard here, jurists of reason would not find it debatable whether petitioner’s claims should be denied. Accordingly, the COA is **DENIED**.

The case is thus **DISMISSED**. The Clerk of the Court shall enter judgment accordingly.

SO ORDERED.

At San Juan, Puerto Rico, on this 13th day of October 2023.

S/AIDA M. DELGADO-COLÓN
Chief United States District Judge